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CBIC issues clarifications pursuant to 53rd GST Council meeting recommendations

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Summary

In light of the recommendations made by the Goods and Services Tax (GST) Council during the 53rd meeting, the Central Board of Indirect Taxes and Customs (CBIC) has issued a series of circulars aimed at providing clarity on various tax-related matters, simplifying operational issues and to reduce litigation. These circulars specifically address the concerns related to the import of services between related entities, the input tax credit (ITC) eligibility under the reverse charge mechanism (RCM), ITC reversal mechanism in the case of post-supply discounts, monetary limit for filing a department appeal, the taxability of loans between related parties, warranted/extended warranty services, etc. Key issues pertaining to the time of supply and place of supply relevant for insurance and banking companies have been addressed along with sector-specific clarifications.

Key clarifications:

1. Valuation of supply of import of services by a related person where the recipient is eligible to avail full ITC[1]:

Where a foreign affiliate provides services to a related domestic entity that is eligible for full ITC, the value of supply would be as under:

- Invoice issued by the domestic entity: The value declared in the domestic entity's invoice may be deemed the open market value (OMV) in terms of the second proviso to Rule 28(1) of the CGST Rules.
- No invoice issued by domestic entity: The value of such services may be deemed as nil and considered as the OMV.

Our comments:

Circular No. 199/11/2023 dated 17 July 2023 addressed the valuation issues between distinct persons. Since the GST provisions are consistent for transactions between distinct persons and related persons, this circular extends the same rationale to related party transactions, which had been subject to litigation, particularly the import of services.

Additionally, the circular also clarifies the applicability of proviso to Rule 28(1) in case of reverse charge transactions. In cases where the taxpayers have not paid any consideration for service and, consequently, no invoice has been issued by the Indian company, the value may be deemed as nil, thereby not attracting GST liability. This clarification is expected to provide relief on issues related to the use of brand name/logo, corporate guarantee, secondment of employees, etc.

2. Time limit for availing ITC in respect of RCM supplies received from unregistered persons[2]:

[1] Circular No. 210/4/2024-GST dated 26 June 2024
[2] Circular No. 211/5/2024-GST dated 26 June 2024

- For supplies received from unregistered suppliers where the recipient pays tax under the RCM, the recipient is required to issue an invoice in terms of Section 31(3)(f) of the CGST Act.
- The relevant financial year for calculating the time limit for availing ITC under Section 16(4) of the CGST Act is the financial year in which the recipient issues the invoice.
- In cases where tax payment and invoice are issued after the time of supply, the recipient is required to pay interest on the delayed payment of tax.
- Delayed issuance of invoice by the recipient may attract a penalty under Section 122 of the CGST Act.

Our comments:

The Directorate General of Goods and Services Tax Intelligence (DGGI) had initiated several inquiries demanding tax on reverse charge transactions pursuant to which the taxpayers voluntarily paid the GST tax liability and simultaneously availed ITC. Such ITC claims were further disputed for being in contravention of the ITC timelines specified in Section 16(4). There were many such cases awaiting interpretation before the courts..

This is a much-needed clarification and is expected to end ongoing disputes between the taxpayers and the department.

3. Monetary limits for filing appeals or applications by the department before GSTAT, high courts, and Supreme Court[3]

Fixing monetary limits for filing of appeals by Central Tax officers	• GSTAT: INR 20 lakh • High court: INR 1 crore • Supreme Court: INR 2 crores
Principles for determination of monetary limits	Principles for determining whether a case falls within the above monetary limits • **Demand of tax:** Aggregate amount of tax in dispute (including CGST, SGST/UTGST, IGST, and Compensation Cess) considered for applying the monetary limit for tax-related disputes. • **Demand pertains to only interest/penalty and/or late fee (excluding tax amount):** Aggregate of interest, penalty, or late fee for respective disputes. • **Erroneous refund:** Aggregate of refund amount in dispute • **Composite orders:** Aggregate demand amount for composite orders involving multiple appeals or demand notices instead of individual appeals

[3] Circular No. 207/1/2024-GST dated 26 June 2024

Exclusions to the monetary limits for filing appeals	The limits mentioned above do not apply to the following cases where: • Provisions of the GST laws (CGST Act or related Acts and Rules) are held to be *ultra vires* to the Constitution. • Orders, notifications, instructions, or circulars issued are held to be *ultra vires* to the GST laws. • The matter relates to the valuation of goods or services, classification of goods or services, refunds, the place of supply, recurring issues, or interpretation of provisions. • Adverse comments passed, and costs imposed against the government/department. • Any other cases deemed necessary to contest by the Board.
Cases where no appeal is filed due to monetary limits	• Such cases will not have any precedent value. • Specific recording to be made by the reviewing authorities that an appeal was not filed due to monetary limits. • Departmental representatives will inform courts that non-filing of appeals is due to monetary limits and does not imply acceptance of the decision by the department.

Our comments:

Emphasising the importance of prudent litigation practices, the Council recommended fixing thresholds for filing appeals in Revenue matters. This is a welcome move that aligns with the objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while making a decision regarding filing an appeal. It will also help curb filing appeals in cases where established precedents from tribunals and high courts have settled the matter and have not been contested in the Supreme Court.

4. Mechanism to prove ITC reversal by the recipient in case of post-supply discount[4]:

- Section 15(3)(b)(ii) of the CGST Act requires reversal of the ITC by the recipient attributable to discounts effected post-supply for exclusion from taxable value.
- Currently, there is no functionality on the common portal for suppliers or tax officers to verify the recipients' compliance with ITC reversal for such discounts.
- Accordingly, until a system functionality is available, the following mechanism may be adopted for substantiating ITC reversal by the recipient:
  - Suppliers can procure a certificate from the recipient of the supply, issued by a chartered accountant (CA) or cost accountant (CMA), certifying the proportionate ITC reversal.
  - The CA/CMA certificate should include details of credit notes, relevant invoice numbers, ITC reversal amounts, and details of FORM GST DRC-03/return/other relevant documents and Unique Document Identification Number (UDIN), which can be verified on the respective professional body's website.

[4] Circular No.212/6/2024-GST dated 26 June 2024

- For cases where the tax involved in the discount does not exceed INR 5 lakh in a financial year, an undertaking/certificate from the recipient is sufficient instead of a CA/CMA certificate.
- These certificates or undertakings will be treated as admissible evidence for reversals of ITC by the recipient[5], and should be produced during any tax proceedings.
- Suppliers can also provide such certificates or undertakings to tax authorities for past periods as evidence of ITC reversal.

Our comments:

The absence of a facility on the common portal to verify the reversal of ITC attributable to the post-sale discount by the recipient was creating disputes between the taxpayers and the authorities. The validity of the said section was challenged in the case of ***Hindustan Unilever Limited***[6] before the Rajasthan HC, which, although acknowledged that the impugned provision was harsh, upheld the validity of the provision. This is a welcome, much-awaited clarification that simplifies operational issues and reduces disputes.

5. Taxability of Employee Stock Option (ESOP)/Employee Stock Purchase Plan (ESPP)/Restricted Stock Unit (RSU) provided by a company to its employees through its overseas holding company[7]:

- The ESOP/ESPP/RSU form part of the employee remuneration, and in terms of Entry 1 of Schedule III of the CGST Act, services by an employee to the employer in the course of employment are neither supply of goods nor supply of services.
- The transfer of securities/shares, which is neither in nature of goods nor services, cannot be treated as import of services by the domestic subsidiary company from the foreign holding company.
- The reimbursement of the cost of shares by the Indian subsidiary to the foreign holding company on a cost-to-cost basis is not liable to GST.
- If the foreign holding company charges any additional fee, markup, or commission for issuing shares, this will be considered as a supply of services of facilitating/arranging the transaction in securities/shares by the foreign holding company to the Indian subsidiary company, and GST will be levied on the additional amount, payable under RCM by the Indian subsidiary.

Our comments:

It is a common practice of Indian companies to provide their employees with the option of allotting securities/shares of their foreign holding company as part of the compensation package as per the terms of the employment contract. On exercising the option by the employees of the Indian subsidiary company, the securities/shares of the foreign holding company are allotted directly by the holding company to the concerned employees of the Indian subsidiary company, and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company. However, as shares are outside the

[5] compliance with Section 15(3)(b)(ii) of the CGST Act
[6] ***D.B. CWP No. 13617/2023***
[7] Circular No.213/07/2024-GST dated 26 June 2024

purview of GST, doubts were raised regarding the taxability of such reimbursement. This clarification aims to settle all such disputes on ESOP taxability.

6. Taxability of loan provided by an overseas affiliate to its Indian affiliate or by a person to a related person[8]

A. Taxability of loan transactions between related entities

- Granting loans/credit/advances by an entity to its related entity, even without consideration, is a 'supply of service' under GST.

- The activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where the consideration is represented only by way of interest or discount, is an exempt supply under GST.

B. Clarification on processing and other charges

- Charges other than 'interest or discount', such as processing fee/service fee or charges of any other nature, are generally charged for undertaking proper due diligence before providing a loan and qualifies as consideration for providing facilitation/processing/administration services for the loan.

- Such due diligence would not be required for related parties or may be waived off depending on the relationship between the lender and borrower.

- Accordingly, there will be no supply of services between the related entities by way of processing/facilitating/ administering the loan, where such loan or credit is provided without charging consideration other than 'interest or discount'.

- No GST liability can be imposed in such cases by applying open market value for valuation.

- In case any fee in the nature of processing fee/administrative charges/service fee/loan granting charges, etc., is charged in excess of the amount charged by way of interest or discount, GST liability would arise on such supply of services

Our comments:

Given that transactions between related entities are deemed to be supplies even without consideration, the authorities often attempt to determine the open market value for all such transactions, even when there is no underlying rationale or intention between the entities. This circular aims to address the issue of notional principal value. While interest and discounts are specifically exempt from GST, there have been issues related to the applicability of GST on processing fees, which has been clarified.

7. GST liability and ITC availability in cases involving warranty/extended warranty, in furtherance to Circular No. 195/07/2023-GST [9]

[8] Circular No. 218/12/2024-GST dated 26 June 2024
[9] Circular No. 216/10/2024-GST dated 26 June 2024

A. Replacement of 'goods' as such or parts under warranty

- In Circular No. *195/07/2023-GST* dated 17 July 2023, it was clarified that:

  - Replacement of parts during the warranty period by the manufacturer or distributor on behalf of the manufacturer would be liable to GST only if additional consideration is charged.

  - Replacement of parts during the warranty period are not exempt supplies, and reversal of ITC is not required.

  - GST would be payable if distributors use parts in their stock or purchase from a third party to provide a replacement under warranty and charge consideration to the manufacturer by issuing a tax invoice.

  - GST would not be payable on the replacement of parts by the manufacturer where the manufacturer provides such parts to the distributor for replacement to the customer during the warranty period without separately charging any consideration at the time of such replacement. Further, no reversal of ITC is required to be made by the manufacturer in such a case.

  - If the manufacturer issues a credit note to the distributor for using parts already provided by the manufacturer for replacement, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.

- All the above clarifications would also be applicable where the 'goods' as such are replaced under warranty.

B. **Replacement by the distributor out of his stock under warranty, on behalf of the manufacturer, and subsequent replenishment of the said parts/ goods from the manufacturer**

- No GST is payable on replacing goods or their parts under warranty where the distributor replaces such goods or their parts using his stock. Then, the goods or parts are replenished based on a requisition raised to the manufacturer.

- The manufacturer provides the said goods or their parts through a delivery challan without any separate consideration being charged.

- The manufacturer would not be required to reverse ITC in such cases.

C. Nature of supply of extended warranty

- In Circular No. *195/07/2023-GST* dated 17 July 2023, it was clarified that:

  - Where an extended warranty is taken at the time of the original supply, the same construes as a composite supply with the the principal supply being the supply of goods, and GST would be payable accordingly.

  In furtherance to the above circular, it has now been clarified that:

- When the agreement for an extended warranty is made at the time of the original supply of goods and the extended warranty supplier is different (OEM/third party) from the original supplier of goods (dealer), such supply cannot be treated as composite supply. It will be an independent supply from the original supply of goods.

- If the extended warranty is made after the original supply of goods or is an independent supply provided by OEM/third party, the supply would be a supply of services independent of the orginal supply of goods. The liability to pay GST would be on the extended warranty supplier.

Our comments:

This clarification aims to standardise GST treatment where the goods are replaced under warranty vis-à-vis part replacement. Further, there were issues relating to the classification of such services, the rate of tax as a composite supply specifically, as multiple parties may be involved. This clarification aims to address all such inconsistencies and promote compliance in tax practices.

Clarifications pertaining to place of supply

8. Place of Supply (PoS) for custodial services provided by banks to foreign portfolio investors (FPI)[10]

- The SEBI Regulation[11] specifies that 'custodial services' in relation to securities means the safekeeping of securities of a client and providing services incidental thereto, including maintaining accounts of securities, collecting the benefits or rights accruing in respect of the securities, etc. Accordingly, banks enter into custodial agreements with FPIs to provide such custodial services mainly for maintaining accounts of the securities held by the FPI.

- Under the erstwhile service tax regime, the custodial services were covered under the purview of services, which are not provided to the account holder. Consequently, the POS of services that do not qualify as services provided to an account holder was determined as per the default rule of the place of provision rules under service tax.

- Accordingly, considering the similarities in provisions, the PoS of custodial services under GST would also be determined as per the default rule under Section 13(2), which specifies the POS to be the location of the recipient of services where the address details are available with the supplier.

Our comments

The department had issued demand notices to several SEBI-registered custodian banks on the taxability of custodial services provided to FPIs on the premise that such services do not qualify as export, considering the POS in Section 13(8). The banks treated such services as exports because services were being rendered to FPIs outside India in exchange for fees in foreign

[10] Circular No. 220/14/2024-GST dated 26 June 2024
[11] Securities and Exchange Board of India (Cutodian of Securities) Regulations, 1996

currency. This clarification brings a huge respite to banks providing custodial services to FPIs, as such services would now qualify as 'export' of services.

9. PoS of goods to unregistered persons in case of supply made through an e-commerce operator[12]:

- PoS of goods supplied through an e-commerce platform to unregistered persons where the billing address is different from the delivery address shall be the address of delivery of goods recorded on the invoice.

- The supplier may record the delivery address as the recipient's address on the invoice to determine the place of supply.

Our comments:

The clause (ca) was inserted in Section 10(1) of the IGST Act effective from 1 October 2023, which provides that where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. It further provides that recording the person's name and state shall be deemed to be the recording of the person's address.
However, taxpayers received representations seeking clarity in the case of the supply of goods made to an unregistered person where the billing address is different from the address of delivery of goods, especially in the context of supply being made through e-commerce platforms. Thus, this clarification should address the concerns raised specifically in the case of goods supplied through e-commerce platforms.

Clarifications pertaining to time of supply

10. Time of Supply (ToS) in case of construction of road and maintenance of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM)[13]

- The HAM contract is covered under the term 'continuous supply of service.'

- ToS shall be earlier than the date of issue of invoice or receipt of payment, provided the invoice is issued on or before the specified date or event completion date specified in the contract.

- In any other case, the ToS is the earlier than the date of provision of service or receipt of payment.

- For continuous supply, the date of service provision may be deemed the due date of payment as per the contract.

- The interest component included in the annuity/installment payments shall also be included in the taxable value.

[12] Circular No.209/3/2024-GST dated 26 June 2024
[13] Circular No.-221/15/2024-GST dated 26 June 2024

11. ToS in case of allotment of spectrum to telecom companies when payment of the licence fee and spectrum usage charges are made in installments[14]

- The date of payment to be made by the telecom operator to the department of Telecommunication is clearly ascertainable from the notice inviting applications read with the frequency assignment letter. Accordingly, a tax invoice would be required to be issued with respect to the said supply of services on or before such due date of payment as per the option exercised by the telecom operator.

- For full upfront payment, the ToS will be earlier than the date of payment of the said upfront amount or its due date.

- For deferred payment, the ToS will be earlier than the date of payment of specified installments or their due date.

- Similar ToS treatment applies to other cases of natural resource allocations where payments are made either upfront or in deferred periodic installments.

Our comments:

Under the HAM model of NHAI, the concessionaire is required to construct the new road and provide operation and maintenance, which is generally over 15-17 years, and the payment for the same is spread over the years. Even in the case of spectrum allocation to telecom companies, the payment of the licence fee and spectrum usage charges are made in instalments spread over multiple years by the telecom companies to the government. GST authorities demand tax liability as soon as the services are completed, irrespective of payments. However, the taxpayers argue that as these services are in the nature of a continuous supply of services, GST should be payable when the instalment is paid.

This clarification seeks to eliminate operational issues and prevent litigation by addressing certain industry-specific challenges.

Clarifications pertaining to insurance companies

12. Taxability of salvage/wreckage value in the hands of the insurance company earmarked in the claim assessment of the damage caused to a motor vehicle[15]:

A. Where the salvage/wreck value is deducted from the claim amount

- In such cases, the insurance company settles the insurance claim by deducting the salvage value/wreck value from the insured's declared value (IDV) as per the mutually agreed terms of the insurance policy, and the salvage remains the insured's property.

- The insurance company may provide support in terms of sourcing competitive quotes or dispose the damaged car to the buyer. However, the ownership of such salvage/wreckage remains with the insured and not with the insurance company.

[14] Circular No.-222/15/2024-GST dated 26 June 2024
[15] Circular No. 215/9/2024-GST dated 26 June 2024

- Accordingly, the deduction on account of salvage/wreck value cannot be construed as consideration for any supply by the insurance company, and no GST liability would arise from such a deduction.

B. Where the salvage/wreck value is not deducted from the claim amount

- In such cases, the insurance company settles the insurance claim on full IDV without deducting any amount towards salvage/wreck value.

- The salvage becomes the property of the insurance company, which is obligated to deal/dispose of the same.

- Accordingly, the insurance company would be liable to pay GST on such disposal/sale of the salvage.

Our comments:

The matter was subject to litigation in the absence of clarity from the ownership aspect. This clarification aims to address as to when the salvage becomes the property of the insurance company. Pertinently, the GST implications would be contingent on mutually agreed terms and conditions between the insured and the insurance company.

13. ITC entitlement by insurance companies on expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement[16]

Issue	Clarification
ITC entitlement by the insurance company on repair expenses	• Under the reimbursement mode, the insured pays for the repair services from non-network garages. • The garage issues the invoice in the name of the insurance company, and the cost of the approved repair services is reimbursed to the insured. • The insurance company is liable to bear the approved cost towards the repair services and is the recipient to that extent. • The ITC of such approved cost for repair services on account of the supply of insurance services would be available to the insurance company and not be blocked under Section 17(5).
ITC entitlement basis the invoice where the insurer's liability is only to the extent of approved claim cost	**A. Two separate invoices issued by the garage bifurcating the approved and excess cost**: The ITC of the invoice specifying the approved cost in the insurance company's name would be allowed subject to reimbursement of the amount to the insured. **B. Single invoice with the total amount in the insurance company's name:** The insurance company will be entitled to the ITC to the extent of reimbursement of the approved claim cost and not the total amount.

[16] Circular No. 217/11/2024-GST dated 26 June 2024

ITC entitlement where the invoice is not the name of the insurance company	The ITC will not be available to the insurance company for non-fulfilment of conditions specified under Section 16(2) for entitlement of ITC.

Our comments:

The ITC eligibility in the reimbursement mode has been a subject of litigation, primarily on the grounds that the supply is made to the insured individual rather than the insurance company. The recent circular clarifies that irrespective of the reimbursement mode, the insurance company is responsible for reimbursing the cost and is the actual recipient of such repair services. This clarifcations aims to provide guidelines for the ITC eligibility and invoice documentation.

14. Reversal of ITC in respect of the portion of the premium for life insurance policies that is not included in taxable value[17]:

- The premium amount for taxable life insurance policies, which is not included in the taxable value[18], cannot be considered as pertaining to a non-taxable or exempt supply.
- Therefore, there is no requirement for reversal of ITC[19] with respect to the said amount.

Our comments:

This clarification aims to reduce litigation while streamlining operational concerns by addressing challenges unique to the insurance industry.

15. ITC eligibility on ducts and manholes used in the network of optical fibre cables (OFC) in terms of Section 17(5)[20]

- Ducts and manholes are used as part of the OFC network for making an outward supply of transmission of telecommunication signals from one point to another.
- Such ducts and manholes are not explicitly excluded from the purview of 'plant and machinery' as defined under the explanation in Section 17.
- Accordingly, it qualifies as 'plant and machinery,' and ITC on such ducts and manholes would be available and cannot be restricted under Section 17(5)(c) and (d).

Our comments:

The ITC on the construction of immovable property is restricted under Section 17(5)(c) and (d) of the CGST Act. The explanation in the section excludes ITC restrictions on plant and machinery. The issue relates to whether ducts and manholes are a part or parcel of immovable property or a structure that is used for making the outward supply, construing plant and machinery. The clarification would benefit telecom and internet provider companies but also helps in understanding the scope and coverage of what constitutes plant and machinery.

[17] Circular No.214/8/2024-GST dated 26 June 2024
[18] as determined under Rule 32(4) of CGST Rules
[19] as per provisions of Rule 42 or Rule 43 of CGST Rules, read with Section 17(1) and (2) of the CGST Act
[20] Circular No. 219/13/2024-GST dated 26 June 2024

16. Issues pertaining to the special procedure are to be followed by the manufacturers of *pan masala*, tobacco, and related products[21]:

- In cases where the make of the machine is not available, the year of purchase of the machine is to be declared as the make number.
- The machine number is mandatory; if it is not available, the manufacturer may assign any numeric number.
- The special procedure is not applicable to manufacturing units in special economic zones (SEZs).
- The special procedure shall not be applicable to manual processes using an electric-operated heat sealer and seamer for packing operations.
- The special procedure applies to all persons involved in the manufacturing process, including job workers/contract manufacturers.

Our comments:

On recommendations of the 50th GST Council meeting, the CBIC, vide *Notification No. 04/2024–CT* dated 5 January 2024, had notified a revised procedure to be followed by the manufacturers of pan masala, tobacco, and related products. However, representations were received from various trade associations seeking clarity on some issues pertaining to the said special procedure, namely the unavailability of the make, the model number, the number of packing machines used, the declaration of electricity consumption, etc. The CBIC has issued these clarifications to address these issues, which should address all the concerns and help ensure uniformity in implementing the provisions.

Our comments

The recent circulars issued by the CBIC further resolve ambiguities and provide clarity on various issues under GST. Prominently, in respect of RCM supplies received from un-registered persons, the relevant financial year for computing ITC time limit will be the financial year in which the self-invoice is generated. In the case of a related party transaction, the reimbursement of cost of shares by the Indian subsidiary to its foreign counterpart on a cost-to-cost basis is not liable to GST. Further, under loan transactions between related persons, there is no requirement to determine the processing fee or other charges where no consideration is charged.

Addressing some other key concerns, such as classification of extended warranty services and streamlining the ITC reversal mechanism, provided much-needed relief to the taxpayers. By clarifying the timing of the GST liability in cases of continuous supply services and establishing clear guidelines for departmental appeals, the CBIC has aimed to reduce litigation and simplify compliance for businesses.

[21] Circular No.208/2/2024-GST dated 26 June 2024

Overall, these measures are expected to enhance operational efficiency and promote a more transparent tax environment.

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